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Globalization and the Rule of Law

Jeffrey Sachs

Galen L. Stone Professor of International Trade, Harvard  
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# Globalization and the Rule of Law

**Jeffrey D. Sachs**

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*Jeffrey D. Sachs is the Galen L. Stone Professor of International Trade at Harvard University, and Director of the Harvard Institute for International Development.*

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## THE GLOBAL CAPITALIST REVOLUTION

We live in revolutionary times, a revolution of global capitalism. Like most revolutions, this one is subject to fits and starts, advances and crises. Indeed we are meeting at a time of crisis. Your honoree tomorrow, Secretary of the Treasury Robert Rubin, the world-respected leader of global finance, has responded to the crisis by calling for a new “Global Architecture.” I have to admit that I wince, a bit, at the phrase. It reminds me too much of the discussion between the Doctor, the Architect, and the Economist, who find themselves discussing the relative merits of their respective professions. They each seek Biblical authority for their claims. The Doctor notes that, “Of course, medicine was the first and therefore the most important of God’s creations. When the Lord took the rib from Adam and made Even, you had thoracic surgery, right at the start of creation.” The Architect replied, “Have you not read the Bible? Much before that event, the Lord created the heavens and the earth out of chaos. Now, when you start with chaos and create order, that is the prime role of the architect. There we were at the very start of creation.” The Economist, of course, leans back in incredulity. “Gentlemen, gentlemen, who do you think created the chaos?!”

What is the nature of the Global Capitalist Revolution? It is the intertwining and intensification of two profound trends: the globalization of society and the diffusion of capitalism. Globalization is an ancient process; long-distance trade and cultural exchanges have occurred and expanded for thousands of years. Technical advances in transport and communications have underpinned the advance of globalization. Adam Smith, in *The Wealth of Nations*, perspicaciously spoke of “the discovery of America, and that of a passage to the East Indies by the Cape of Good Hope,” as “the two greatest and most important events recorded in the history of mankind.” In Smith’s theory, borne out by two centuries of experience, many favorable consequences flow from an expansion of the extent of the market, which enables greater specialization; induces innovation; and facilitates the diffusion of technologies.

Since Vasco da Gama circled the Cape of Good Hope in 1497, the process of globalization has continued from one technical advance to the next: ocean-going sailing vessels, railroads, steamships, the telegraph (recently dubbed “the Victorian Internet”), the Suez and Panama canals, automobiles, airplanes, container ships, and most recently the Information Technology revolution, so that now a single fiber optic cable can transmit thousands of volumes of text around the world

in less than a second.

There is a second trend, and that is the spread of capitalism as the organizing principle of national economies. Capitalism, I will note, is a distinctive – and from an historical point of view, utterly remarkable – social, political, and above all economic system. It had its infancy in the Indian Ocean in the Middle Ages, its adolescence in Genoa, Venice, Seville, and Lisbon in the Renaissance, and its early adulthood in Amsterdam and especially England in the eighteenth and early nineteenth centuries. From there, it has spread throughout the world – fitfully, often violently, with great reversals, but now with revolutionary force in recent years.

One authority in the mid-nineteenth century recognized the historical uniqueness, and utter productive force, of this historically unique system. Perhaps no one admired the sheer productive force of capitalism more than Karl Marx, who together with Friedrich Engels predicted in *The Communist Manifesto* that “The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian, nations into civilization. The cheap prices of its commodities are the heavy artillery with which it batters down all Chinese walls, with which it forces the barbarians’ intensely obstinate hatred of foreigners to capitulate. It compels all nations, on pain of extinction, to adopt all the bourgeois mode of production; it compels them to introduce what it calls civilization into the midst, i.e., to become bourgeois themselves. In one word, it creates a world after its own image.”

Marx was right; capitalism did triumph, and its triumph was bloody. It also took, surprisingly, some 150 years after Marx’s prediction. We have witnessed the most revolutionary advance in capitalism in history, with more than half the world’s population abandoning statist economic strategies, and thrusting national economies into international markets, sometimes with unpredictable, and even highly undesirable results. (I should hasten to add that most everything else in *The Communist Manifesto* was sadly off track, especially the thought that capitalism would soon enough plant the seeds of its own destruction through the immiserization of the masses.)

The confluence of globalization and the spread of capitalism is producing a global market society of unique character, still dimly perceived, and with instabilities and challenges unique to our age. The challenge today that I want to speak of is Law in the Age of Global Capitalism. It is in the legal realm that we find many of the deepest weaknesses and greatest hopes for our age. It is in the processes of law, perhaps more than in economic institutions, that the greatest puzzles of facing our societies lie. The challenges of creating a rule of law fit for global capitalism involve two levels of mystery: that of law at the level of the nation state, and that of international law fit for our global capitalist society.

To understand the challenge of law, it is appropriate to begin with the historically distinctive character of capitalism itself. Capitalism is a system that is distinctive in three dimensions: economic, cultural, politico-legal. On the economic level, capitalism is remarkable for its drive to define property rights over all inputs and outputs of human production, and to trade those property rights in organized markets. Throughout history, until the rise of capitalism, most human labor was tied to the land, rather than traded in markets; land was inherited and inalienable, or held communally; capital was under the control of political masters. Under capitalism, all became

subject to market exchange. This exchange, moreover, was governed by extensive institutional arrangements – patterns of contracts; systems of accounting; legally created fictions like patents and corporations – that gradually emerged over centuries of evolution.

On the cultural level, the changes were equally dramatic. Social mobility destroyed age-old patterns of hierarchy and subservience. Gender differences gradually gave way under market forces.

But transformations in the politico-legal sphere were perhaps even more remarkable than the social transformations. As Max Weber taught us, capitalism rested on a new kind of state and legal order. If the basis of state organization throughout almost all of history was either charisma of the leader, or tradition of the social group, capitalist state organization was predicated on a rational, law-bound state. Indeed the state was to play a central, if paradoxical role in capitalist organization. It had to be strong, strong enough to be the third-party enforcer of the increasingly complex web of contractual obligations that defined the social division of labor. On the other hand, it had to be self-limited, bound by its own laws, abstaining from the temptations to translate raw power and control over coercive instruments into methods of appropriating private property.

This has produced the essential paradox that has commanded Western political and legal speculation for more than two centuries: how to create the strong, but self-limiting state. It was Montesquieu's question, Jefferson's goal, Madison's original handiwork, but in fact the ongoing challenge of the legal order in almost all of the world.

Capitalism is built on a second legal paradox, that of the international order. Since the start of capitalism in Venice and Genoa, but especially since the rise of modern capitalism in the nineteenth century, the capitalist order has depended on international exchange and enforceable international contracts, in a global system of nation states, without an overarching politico-legal authority. At least since Grotius, this has also commanded Western speculation: how to create an international regime of law in a world of sovereign nation states?

These two paradoxes of law – the strong yet law-bound state; and the sovereign yet law-bound nations – remain the two greatest conundrums for achieving a stable and prosperous global capitalist society. There is no assured success in meeting these challenges. Theorists have given us answers, but they are not especially convincing. History, on the other hand, gives us many reasons for outright worry.

## THE TRANSITION TO CAPITALISM

Consider first the transition to capitalism in an individual national economy. In England, we know that the long transition to capitalism – from the enclosure movements of the fifteenth and sixteenth centuries, to the royal chartered joint-stock companies of the seventeenth and eighteenth centuries, to the corporate limited-liability industrial enterprises of the nineteenth century – accompanied a similarly long-term process of bringing the state under legal control. While Englishmen always had their rights, they had to win specific concessions from the Glorious Revolution of 1688, to the great reform legislation of the nineteenth century. This has given many political scientists and historians the false idea that capitalism is inherently an evolutionary process, with gradual and hard-won institutional change.

The actual history of capitalism is quite different, however. While capitalist institutions evolved gradually in Western Europe, and especially Holland and Britain, these same institutions were transplanted with often violent and revolutionary force to most other parts of the world. Marx was right; the Chinese walls were battered down, in the Opium Wars of 1842-42; by Commodore Perry's Black Ships in Tokyo Bay in 1854; by the brutal Scramble for Africa among European imperial powers in the 1880s; and by the violent conquest of India culminating in 1857. Imperial rule spread capitalist legal institutions, but typically not representative government, to most of the world by the end of the nineteenth century.

Market systems were often in shotgun marriages to colonial rule. Even when countries retained or won their independence, as in South America in the 1820s, or Siam throughout the nineteenth century, market forces were rarely melded with a law-bound, self-limiting state. The genius of the English and American constitutions could be copied on paper, but rarely lived in practice. Ancient traditions of patrimonial rule continued to flourish in countries lucky enough to keep their independence from colonial domination.

When the Leviathan colonial monster states were withdrawn after World War II, they were often replaced by indigenous Leviathan states constituted by the parties borne of the independence struggle. These states sometimes adopted markets, but they very rarely held the state aloof as a third-party enforcer of private contracts, or a mere supplier of public goods. The state meddled; it expropriated; it confiscated. In short, it rarely lived within the law.

In the 1980s, these meddling states, Cárdenas's Mexico, Nasser's Egypt, Perón's Argentina, Atatürk's Turkey, and so on – to name the heroic nationalist meddlers – went bankrupt during a worldwide tightening of credit. Bankruptcy similarly overtook the true monster states of the Soviet system. Poland precociously went bankrupt at the end of the 1970s; Hungary during the 1980's; and the Soviet Union in 1991. All of these financially distressed states were forced to retreat as a result of their economic and financial weakness. Capitalist rhetoric and goals spread, together with a newly expanded world economy driven by the amazing advances in communications, transport, and information flows.

But in the 1990s, the paradox of the strong but self-limiting law-bound state remains largely unsolved in the developing world. In many parts of the world, the state is too weak even to meet basic needs – roads, bridges, power, public health facilities – much less to adjudicate private commercial disputes. In other parts of the world, the state is on its feet, but running to impound private property through excessive taxation, corrupt licensing and monopoly arrangements, and the like. Russia, remarkably, has found the worst of both worlds: a state of exquisite day-to-day weakness, unable even to pay the soldiers, and yet one that is monstrously predatory. The Russian paradox is understood by the fact that the Soviet legacy to the new Russian state was a rich horde of natural resources, especially oil and gas, that remained in public-sector hands. Even though the state was weak, it could corruptly privatize its own resources, thereby creating an illegitimate oligarchic class and a bankrupt government at the same time. It is as if the post-communists under Yeltsin saw fit to enact an ironic variant of Pierre Joseph Proudhon's socialist gloss, that "Property is theft."

It is a central question of jurisprudence, economics, and sociology, to understand how to limit the

Leviathan, how to create the self-limiting state. The formal answer is constitutionalism, but as the old saw goes, many countries' constitutions are to be found in the periodical section of the library. Another more interesting answer is "constitutionalism plus civil society." In short, create viable constitutional arrangements, but then have them defended by private associational groups. The unions, the church groups, the retiree's federations, the ACLU, homeowners, and private businesses, individually and in associations, are the daily bulwark against state encroachment. This is a good answer, but still incomplete. Civil society needs organization; organization generally requires resources; resources require wealth. Civil society tends to be strong in rich societies and weak in poor societies. But without the defense of civil society, it is extremely difficult to make a workable capitalist system that can deliver economic growth. The result, in economist's jargon, is a "poverty trap," in which bad government creates poverty; and poverty reinforces bad government.

I had the rare personal experience to serve as a principal economic advisor in both Poland and Russia in the early 1990s. The contrast in reform outcomes, in my view, revolves centrally around the differing roles of law in the two societies. In Poland, the post-communist state was essentially law-bound from the start. Corruption scandals were objects of public attention and discipline. Organized groups, such as the Solidarity Trade Union movement, the Roman Catholic church, and various peasant movements, provided daily discipline on the government. These groups often opposed specific market reforms, and yet they were the key to success of market reforms – by creating an environment of a law-found state, in which private market transactions and reliable property rights could be reformed.

In Russia, by contrast, such groups did not exist. In a nutshell, they had been extinguished by the unique cruelties and totalitarian aspirations of the Soviet system, not to mention the preceding millennium of Russian patrimonial rule. Civil society was dead, and has not yet come to life. The private sphere emerged after Gorbachev began his reforms – nightclubs, Russian MTV, even some small business – but without the aspiration, tradition, or apparent capacity to act as a control on state abuse. When the Yeltsin administration, under Prime Minister Chernomyrdin, began to distribute oil and gas reserves to political cronies under the guise of a special privatization process (known as the "shares for loans" deal), there were no groups in society with the power, capacity, and interest to blow the whistle.

Daniel Kaufmann of the World Bank has measured on implication of these difference pathways. In Poland, the black market economy is around 15 percent of the total, and is falling over time, as economies in "shadow" activities register to ensure themselves the prerogatives and powers of legal enterprises. In Russia, by contrast, the black market economy is perhaps 40 percent of the total, and has risen sharply since 1991. The state is too weak to enforce tax collections; and private property is too uncertain to register and operate enterprises in the broad daylight.

Of course, there were other differences of note between the two countries: geography, pre-communist history, cultural myths and references, political iconography. These help to explain the relative buoyancy of private economic activity in Poland compared with Russia as well as the vast gulf in civic participation between the two countries. But in the end, in my view, the most important difference boils down to one central truth: Poland achieved a law-based and limited state; Russia continues to flounder with a weak and lawless state.

The internal legal order is one of two unsolved legal puzzles of modern capitalism. The second is international law in a world of sovereign nations. How can international trade and long-term contracting – for instance, to defend a foreign investment – be achieved in an international environment without an overarching political authority? Even more basically, how can peace be sustained? Again, theorists have offered some answers. One answer is a dominant power, or in the jargon of political science, a hegemonic power, producing a Pax Britannica or a Pax Americana.. A current and more generally applicable approach, of not inconsiderable merit, is the idea that states cooperate in creating a rule-based international environment because cooperation is a positive sum game. The cooperation is enforced by the threat of sanctions from the other states in the event that one state violates international agreements, a so-called trigger-point strategy. In the nineteenth century, statesmen spoke of the balance of power. In the twentieth century, political theorists speak of an international cooperative equilibrium.

Trigger-point strategies may be theoretically sound. In practice, true cooperation is anything but assured. In 1910, the European powers could look out on the world as a marvel to behold: roughly five-sixths of the world's habitable land area was European, or settle by Europeans, or under European colonial rule. The balance of power in Europe had preserved peace among the imperial powers for most of the preceding century, since the end of the Napoleonic Wars. A famous author of the day, Norman Angell, could write in his 1911 bestseller, *The Illusion of War*, of the inevitability of international peace, since the alternative was unthinkably costly. Of course, the unthinkable occurred, just three years after Angell's book. Twenty years later, a post-World War I concert of nations, still trying to pick up the peaces, collapsed yet again in financial chaos of the Great Depression and the horrific destruction of World War II.

We are now on our third major effort in this century to construct and manage a stable international order. Once again, we are at risk. Not, thank God, because of an imminent risk of global war, but because of grave shortcomings in international institutions – essentially a problem of missing laws on international level. An extended analogy of domestic and international finance can clarify the problem.

Consider the body of law governing the U.S. banking sector, with similar laws in most of the other advanced market economies. For much of U.S. history, the banking system was subject to periodic financial panics, which ravaged the banks and created serious downturns in economic activity. Such panics hit the U.S. with full force in 1873, 1893, 1907, and 1933. The panics had idiosyncratic causes, but deep commonalities in basic economic processes. In essence, they represented sudden rushed withdrawals of deposits by masses of the population. Typically, an underlying shortfall of the gold supply would combine with some piece of bad economic news, perhaps a crop failure. Depositors would begin to withdraw funds to cover their liquidity needs. A gradual drain of funds from the banking system would then produce worries about the health of particular banks. At that point, some depositors would begin to accelerate their withdrawals.

Suddenly, depositors' attention would shift from fundamental issues – the gold supply, or the harvest, or even the health of the bank – to a less fundamental issue, the behavior of the other depositors. From logic and experience, they would know that the bank lacked the funds on hand to satisfy the general rush of deposit withdrawals. Banks after all are in the business of “maturity transformation,” borrowing short-term deposits, often sight deposits, to lend long – counting

always on the non-synchronized deposits and withdrawals of individual bank customers to remain liquid. When depositors' attention shifts from the economy itself to withdrawals of the other depositors, the game is up. The key then becomes to step ahead of the other depositors, since withdrawals will proceed on a first-come, first-served basis until the bank runs out of cash on hand and on short-term credits that it can draw upon from other banks, who soon enough will be subject to the same panic.

For decades, hard-nosed economic observers argued that the periodic failures of banks were well-deserved "cleansing" processes. Bad banks got what they deserved; and if bank failures brought down companies that depended on the particular banks for working capital, those firms too got what they deserved, since they obviously were living dangerously, beyond their means. Such arguments, however, were balanced by other arguments that suggested that bank failures were unnecessary pathologies of maturity-transforming financial intermediaries, and that they should be addressed through special financial therapy. Walter Bagehot, the great and influential editor of *The Economist* magazine in the late nineteenth century, argued in favor of a "lender of last resort," suggesting that the central bank (in Bagehot's specific view, the Bank of England) should provide an elastic supply of credits to a commercial bank under attack. Others suggested that the central bank's function should be augmented by government-backed deposit insurance, which would protect individual depositors from losses in the event of a bank panic. The existence of such insurance, it was argued, would be enough to forestall a panic from arising, since each depositor would understand that there was no need to rush to the bank even if the other depositors were fleeing.

These two bulwarks became the firewall against bank panics in the United States. Since the enactment of the Federal Deposit Insurance Act in 1934, the U.S. has had no generalized bank panics. The only bank runs have hit very small banks chartered under state laws and not covered by deposit insurance. The same general principle – of heading off individually rational but collectively destructive creditor panics – informs the U.S. Bankruptcy Code, a legal edifice that has been designed to foster collective actions among creditors to maximize the value of the financially distressed enterprises (in Chapter 11), and to foster efficient operation of financially distressed municipalities (in Chapter 9).

Now let us return to the problem of the lawless international economy. During the first half of the 1990s, exuberant U.S., European, and Japanese bankers poured tens of billions of dollars of loans, many of short-term maturity of less than one year, into the fast-growing economies of East Asia. By mid-1997, the international banks had lent five developing countries in East Asia – Indonesia, Korea, Malaysia, the Philippines, and Thailand – no less than \$275 billion in combined loans, of which a remarkable \$175 billion was short term. As in typical maturity transformation, the short-term loans were converted by Asia's own banks and corporations mainly into long-term projects, some in real estate, some in export industries, but few in liquid assets.

Up through 1996, the investors and borrowers could judge the situation as "so far, so good." But gradually in 1996, the news turned a bit sour. Credit tightened a bit, as the U.S. economy soared and the dollar strengthened against other currencies. Since the East Asian currencies were tied to the dollar, their currencies strengthened as well. Some projects began to totter, especially in Thailand where over-borrowing had led to a glut of office buildings in downtown Bangkok. In

any event, international bank lenders slowed their capital inflows, and in some cases began to demand outflows. As in a run-of-the-mill domestic bank panic, the trickle of outflows accelerated, until, following the devaluation of the Thai currency on July 2, 1997, the outflow turned into a rush. A generalized panic was beginning, but rather than bringing down a bank, or even a national banking system, the panic threatened the economies of the vast Asian region.

Now, ladies and gentlemen, we can see how the lacunae of international law played into the hands of financial panic. There was no true lender of last resort available to meet the liquidity withdrawals of increasingly skittish international banks. There was no international deposit insurance in place to keep the depositors' minds focused on the long term, and away from the behavior of the other depositors. There was no bankruptcy law to prevent a "creditor grab race," when tottering banks actually began to fail, thereby accelerating the depositors' rush to the exits. In short, the legal gaps opened up the system to profound problems of collective action – the very kind of problems addressed through decades of experience in domestic financial legislation and official practice.

In the past year, the panic turned into a rout. Virtually every heavily borrowed developing country has been hit. Only monetary expansion by the Federal Reserve Board stands between the U.S. economy and the financial conflagration abroad. As always in international crises such as this, and as in the nineteenth and early twentieth centuries in the United States, we hear observers claiming that the debtors and creditors are "getting what they deserve," that the cleansing operation is part of the salutary processes of the capitalist system. The International Monetary Fund unwisely deemed the outflow of funds from Asia to be a crisis of "Asian Capitalism," thereby putting the spotlight on alleged weaknesses in Asian society and economic practices – a surefire way to accelerate a panic. We don't have a Crisis of Asian Capitalism, as was so widely proclaimed in Washington. We in fact have a Crisis of Global Capitalism, the problem of living in an international environment that lacks the rudimentary instruments to control financial panic.

In my own view, the solution to this Crisis lies in large part in improving the international legal environment – for example, by creating functional equivalents of bankruptcy law, and perhaps lender of last resort mechanisms, to forestall, or at least mitigate, panics such as these. Just as Chapter 9 of the Bankruptcy Code offers three levels of protection for financially distressed local government – a timeout on debt servicing, an opportunity for debtor-in-possession financing of working capital needs, and a framework for a grand creditor-debtor bargain to wipe out an overhang of bad debt – so too we need a legal structure for sovereign financial distress in the international environment.

Such a view may appear quixotic, but in fact we have made some remarkable progress in recent years in creating an international legal framework for commercial transactions, despite the absence of an overarching, or hegemonic, power. The establishment and successful operation of the World Trade Organization, for example, involves the codification of a remarkable corpus of international law and practice regarding international trade, international investment, and even the international treatment of intellectual property rights. These laws are enacted through inter-state treaty obligations. Admittedly they may be difficult to enforce in the event of a major international crisis, but in times of normal politics, they have become meaningful and even enforceable guideposts of behavior.

I should note, in passing, that in addition to international legal reform, other steps in macroeconomic and financial management could also eliminate or reduce the frequency and severity of international financial crises. Such steps include: limits on short-term capital flows, the adoption of flexible rather than pegged exchange rate regimes, and better supervision of financial markets both in the creditor and debtor countries.

## A CUSP OF HISTORY

Each generation faces challenges that are unique to its times. Our challenge, I believe, is to make the newly connected global economy function in the interests of the vast world population increasingly tied together in a common economic fate. As I have explained, this must involve a search for solutions to two fundamental, and largely unsolved, legal puzzles: how to foster law-bound states, as states still constitute the core political building blocks of our global society; and how to foster a law-based international environment that is fit for a world economy of ever-expanding cross-border linkages and dependencies.

I want to stress that these challenges will become harder, not easier in the coming decades. The continuing rise in the global population, from around 5.7 billion today to perhaps 8.5-9.5 billion by the year 2050, combined with a hoped-for significant increase in material well-being, especially for the developing world (which currently has a population of some 4.7 billion, or roughly 85 percent of world population), will put unprecedented stresses on our physical environment. We are, of course, in the search for international laws to govern anthropogenic, or man-made, climate change – which poses profound risks for vast regions of this planet. In two weeks, representatives of more than 100 countries will meet in Buenos Aires to discuss international law on climate change. Earlier meetings have produced important treaty agreements, but, alas, these have not yet been ratified by the United States. Nor will legal enactments be enough for much of the planet. I must add, as a digression, but also a subject for a much longer analysis at another time, that large parts of the world, in most difficult physical environments – such as landlocked countries in Equatorial Africa; or the vast semi-arid expanses of Central Asia; or the landlocked communities of the Andes highlands; or much of the tropics, where infectious vector-borne diseases such as malaria are endemic – will face profound development challenges with or without the improvement of domestic international legal codes. While it is true that geography is not destiny in economic development, adverse geographical conditions can still impose huge, and so far unsurmounted hurdles to rapid material progress.

In conclusion, I want to throw the challenge back to you, to my very generous and gracious audience today. The American legal community, especially of the Yale faculty that is renowned in our country's legal history for its attention to the social responsibilities of law and lawyers, must play a central and vital role in overcoming the twin paradoxes of domestic and international law: the quest to create an international legal framework that emphasizes internationally agreed legal norms rather than the rule of the jungle or still less the resort to inter-state violence. As I am sure you will readily agree, the international economy is far too important to be left to the economists.

I would like to close by mentioning three specific tasks for a great university faculty and its esteemed alumni. The first, if you will permit me, is the need to refocus and increase scholarly attention on the issues of the sociology of law, but now a sociology of law appropriate to the age

of global capitalism. Where does national law come from? Do legal transplants work? When do transplants succeed, as in Poland; when do they fail, as so far in Russia? How to instill respect for law, and how to foster the civil society which is one of the only, if not the only, reliable long-term bulwarks against the abuse of state power? These are tough questions. I am proud of a team of scholars led by Katharina Pistor and Phil Wellons for addressing these questions in the Asian context, in a forthcoming study for the Asian Development Bank.

The second task is the internationalization of the legal curriculum and the student body. We need to teach not just American jurisprudence, but also a sound appreciation for alternative legal systems, their evolutions, their distinctive character, their interaction with our own legal system. And we need, as much as possible, to open our doors to the thousands of students from abroad that deeply want to taste the life and wisdom of the American legal community and American legal scholarship. Foreign economics graduates of major faculties return to their countries to assume national economic leadership – Yale boasts the resourceful and reform-minded President Ernesto Zedillo of Mexico. Similarly, as I'm sure you could recount in dozens of cases, foreign graduates of our laws schools go back to assume leadership positions in the judiciaries and political structures of young and often fragile democracies. The gift of immersion in American legal thinking and practice can be of immeasurable value to their societies, even as U.S.-taught law is put in the appropriate historical and cultural context in the home society.

Third is the direct action that we can take – dare I say economists and lawyers working together – to help promote the ideals of law-based market democracies on the world stage. We must, of course, always balance pride with humility, knowledge of our own society with sensitivity to the cultures and traditions of foreign societies, whenever we embark on a process of aiding institutional changes in other countries. But we should also not shrink from the challenge. Lawyers and economists working abroad together have a great role to play in projects of judicial reform; judicial training; constitutional design; and many other areas. Our counsel is sought; our counsel can make a difference if given with due care. It is, in the final analysis, our own world and the world of our children that we hope to shape and to make secure for peace and prosperity.

I thank you very much for the high honor to join you on this important weekend, and for your very kind attention.

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